



State of Utah

Department of
Natural Resources

ROBERT L. MORGAN
Executive Director

Division of
Oil, Gas & Mining

LOWELL P. BRAXTON
Division Director

OLENE S. WALKER
Governor

GAYLE F. McKEACHNIE
Lieutenant Governor

December 6, 2004

CERTIFIED RETURN RECEIPT
7099 3400 0016 8896 1799

Steven Powell
P. O. Box 253
Castledale, Utah 84758

Subject: Proposed Assessment for State Cessation Order No. MC-04-01-08(1),
Cherry Hill Quarry (M/049/021), Utah County, Utah

Dear Mr. Powell:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced cessation order. The cessation order was issued by Division Inspector, Lynn Kunzler, on November 16, 2004. Rule R647-7-103 et. seq. has been utilized to formulate the proposed penalty for the violation as follows:

- M/049/021 – Violation 1 of 1 \$1,760

The enclosed worksheet specifically outlines how the violation was assessed.

By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of this Cessation Order has been considered in determining the facts surrounding the violation and the amount of penalty. If the violation has not been abated at the time of the proposed assessment, the assignment of good faith points cannot be made. If you feel that you are eligible for good faith, you should supply relevant information to the assessment officer within 15 days of the violation abatement date so that it can be factored into the final assessment.


Otherwise, under R647-7-106, there are two informal appeal options available to you:

Steven Powell
Page 2 of 6
M/049/021
December 6, 2004

1. If you wish to informally appeal the fact of the Cessation Order, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director or Associate Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.
2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

If a timely request for review is not made, the fact of the cessation order will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the proposed assessment. Please remit payment to the Division, mail c/o Vickie Southwick.

Sincerely,



Daron R. Haddock
Assessment Officer

DRH:jb
Enclosure: Worksheet
O:\M049-Utah\M0490021-CherryHill\Non Compliance\Assessment-MC04-01-08.doc

COMPANY / MINE Cherry Hill Quarry PERMIT M/049/021
NOV / CO # MC-04-01-08(1) VIOLATION 1 of 1
ASSESSMENT DATE December 6, 2004
ASSESSMENT OFFICER Daron R. Haddock

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?
2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Insignificant	1-4
Unlikely	5-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

*** *An Operator is required to obtain a permit from the Division of Oil Gas and Mining prior to conducting mining operations. Screening operations and removal of material from the site was occurring even though there was no authorization to do so. The Workout Agreement, which had previously authorized the activity had been cancelled. Disturbance was actually occurring at the site without approval.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

*** *The inspector stated that no damage occurred as a result of the violation, although continued removal of material could have reduced the reclamation potential by not leaving sufficient materials to reclaim the remaining portion of the site. Damage is assessed at 0 points.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement?
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 20

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation, which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference, lack of diligence, or lack of reasonable care? IF SO--NORMAL NEGLIGENCE; or, was this violation due to reckless, knowing or intentional conduct or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Greater Degree of Fault

ASSIGN NEGLIGENCE POINTS 16

PROVIDE AN EXPLANATION OF POINTS:

*** *The inspector indicated that the operator was able to remove and sale additional materials after being served with the termination of the workout agreement. This indicates indifference to the rules to the point of intentionally conducting mining activities without the authority to do so. A prudent operator would understand the need to obtain a permit prior to conducting mining operations. No contact was made to the Division, to verify the need for a permit or obtain an extension of the workout agreement. The Operator was intentionally proceeding to mine and receive economic gain, thus the assignment of points in the Greater Degree of Fault range.*

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?
IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20*
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10

- (Permittee used diligence to abate the violation)
 • Normal Compliance 0
 (Operator complied within the abatement period required)
 (Operator complied with condition and/or terms of
 approved Mining and Reclamation Plan)

*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20*
 (Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10*
 (Operator complied within the abatement period required)
- Extended Compliance 0
 (Permittee took minimal actions for abatement to stay
 within the limits of the NOV or the violated standard of the
 plan submitted for abatement was incomplete)
 (Permittee complied with conditions and/or terms of
 approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? _____

ASSIGN GOOD FAITH POINTS -

PROVIDE AN EXPLANATION OF POINTS:

*** *The abatement has not yet been accomplished, therefore no good faith points can be awarded at this time.*

V. ASSESSMENT SUMMARY (R647-7-103.3)

NOTICE OF VIOLATION # <u>MC-04-01-01(3)</u>	
I. TOTAL HISTORY POINTS	<u>0</u>
II. TOTAL SERIOUSNESS POINTS	<u>20</u>
III. TOTAL NEGLIGENCE POINTS	<u>16</u>
IV. TOTAL GOOD FAITH POINTS	<u>-</u>
TOTAL ASSESSED POINTS	<u>36</u>
TOTAL ASSESSED FINE	<u>\$ 1,760</u>